ARTHUR W. BOONE

IBLA 76-762 Decided September 30, 1977

Appeal from a decision of the California State Office, Bureau of Land Management, declaring appellant's Barefoot Lode and Barefoot Lode No. 2 mining claims null and void ab initio. CA 3812.

Affirmed as modified and remanded.

1. Administrative Authority: Estoppel--Estoppel--Mining Claims: Lands Subject to--Mining Claims: Location

   The fact that a mining claimant has held a claim for many years and performed work on the claim does not, by itself, create any rights against the Government which will estop the Government from determining the validity of the claim. It is incumbent upon the locator of a mining claim to exercise considerable care in ascertaining the status of the land embraced in the claim and the limitations of his rights as the holder of an unpatented mining claim. Failure of a Government employee to advise appellant that the land embraced in the mining claim was closed to mining location cannot give life to an invalid claim.

2. Mining Claims: Location--Mining Claims: Possessory Right

   A mining claim located in a power site at a time when the land was withdrawn from mineral entry is null and void ab initio. However, such a claim embracing a discovery may still be valid under a new location made by holding and working the claim pursuant to 30 U.S.C. § 38 (1970) while the

land was open to mining location under the Mining Claim Rights Restoration Act of August 11, 1955, 30 U.S.C. § 621 et seq. (1970).

3. Mining Claims: Location--Mining Claims: Possessory Right

Under 30 U.S.C. § 38 (1970), holding and working a mining claim in open, notorious, adverse possession for the period of time required to establish adverse possession of mining claims, during which time the land is open to mining location, is tantamount to a new location or relocation, dispensing with proof of valid notices. However, section 38 does not obviate the necessity of a discovery of a valuable mineral in order to establish a valid claim.

APPEARANCES: Carolyn D. Phillips, Esq., Rodeo, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a decision of the California State Office, Bureau of Land Management (BLM), declaring appellant's Barefoot Lode and Barefoot Lode No. 2 mining claims null and void ab initio. The claims are situated in the E 1/2 of Sec. 12, T. 3 N., R. 14 E., M.D.M., Tuolumne County, California. The ground for the decision below was that the notices of location for the two claims were recorded in the county recorder's office on July 2, 1936, and December 17, 1954, respectively, at a time when the subject lands were withdrawn from entry and location under the mining laws by Executive Order as a part of Power Site Reserve No. 86.

The BLM decision stated that the Mining Claims Rights Restoration Act of August 11, 1955, 30 U.S.C. § 621 et seq. (1970), restored certain lands in power site withdrawals to location under the mining laws, but did not retroactively validate claims located prior to the effective date of the Act on land withdrawn for power site purposes. The decision below was stated to be without prejudice to the right of the appellant to relocate the claims, although the BLM noted that much of the land in the area is now within the New Melones Project and would not be subject to location at this time.

In his statement of reasons for appeal, appellant asserts that he has been mining the claims for at least 20 years, that he has

extracted minerals from the claims, and that this has generated income which he has reported on tax returns. Appellant alleges that he has constructed improvements on the land, including a cabin which he uses. The contention is made by appellant that his claims were valid prior to the New Melones Project withdrawal since he was diligently working to discover valuable minerals on the claim at the time of the withdrawal. Finally, appellant asserts that the validity of his claims is established by the failure of the Government to advise him that the land was closed to entry, thus allowing him to pay taxes and make improvements on the land.

The issue presented by this appeal is the effect of the continued possession and working of a mining claim subsequent to enactment of the Mining Claims Rights Restoration Act of August 11, 1955, 30 U.S.C. § 621 et seq. (1970), where the claim was initially located on land withdrawn from entry under the mining laws for power site purposes.

Appellant has not disputed the fact that the subject land was part of a power site reserve withdrawn from entry under the mining laws at the time of the purported location of his claims. 1/ Mining claims which are located on land which is closed to mineral entry are null and void from their inception. Cajen Minerals, Incorporated, 31 IBLA 188, 189 (1977); David Loring Gamble, 26 IBLA 249, 251 (1976); Leo J. Kottas, 73 I.D. 123 (1966), aff'd sub nom., Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970).

However, as this Board noted in Beverly Trull, 25 IBLA 157 (1976), certain lands within power site withdrawals were opened to mineral entry by the Mining Claims Rights Restoration Act of August 11, 1955, 30 U.S.C. § 621 et seq. (1970):

> All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of

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1/ Lands withdrawn or classified for power site purposes were withdrawn from location of mining claims by section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. § 818 (1970). The statute provided that such lands shall be open to entry and location only when the Federal Power Commission has made a determination that the value of the land for purposes of power development will not be damaged thereby and has given notice of such determination to the Secretary of the Interior. Henry Stagnaro, 31 IBLA 317 (1977); Leslie G. Folwell, A-31104 (August 18, 1969). The land was not reopened in this manner.

> the mineral resources of such lands under applicable Federal statutes: Provided, That all power rights to such lands shall be retained by the United States * * * And provided further, That nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

30 U.S.C. § 621(a) (1970).

This statute did not retroactively validate claims located prior to the effective date of the Act while the land was in a power site withdrawal so as to make the claims effective as of the time of their original location. Roy R. Cummins, 26 IBLA 223, 226 (1976); Beverly Trull, supra, at 158; Ed Wuilliez, 12 IBLA 265, 267 (1973); and Gardner C. McFarland, 8 IBLA 56, 59 (1972). Therefore, the BLM was correct in holding appellant's original locations of the Barefoot Lode and Barefoot Lode No. 2 claims null and void from their inception.

[1] Appellant's contention that the validity of his claims is established by the failure of the Government to advise him that the land was closed to entry is in error. The fact that a mining claimant has held a claim for many years and performed work on the claim does not, by itself, create any rights against the Government which will estop the Government from determining the validity of the claim. Roy R. Cummins, supra, at 226. It is incumbent upon the locator of a mining claim to exercise considerable care in ascertaining the status of the land embraced in the claim and the limitations upon his rights as the holder of an unpatented mining claim. Leslie G. Folwell, A-31104 (August 18, 1969); cf. United States v. Consolidated Mines and Smelting Co., Ltd., 455 F.2d 432, 447 (9th Cir. 1971) (Reliance on open status of land is unreasonable and, hence, estoppel will not lie where details of effect of withdrawal were available upon inquiry at the local land office). Failure of a Government employee to advise appellant that the land embraced in the mining claims wasclosed to mining location cannot give life to invalid claims. Foster Mining and Engineering Company, 79 I.D. 599, 605, 7 IBLA 299, 312 (1972); Leslie G. Folwell, supra. 2/

2/ As noted in Leslie G. Folwell, supra, the mining laws of the United States have in the past presented a problem of administration

The Secretary of the Interior has plenary authority over administration of the public lands and is charged with the responsibility of recognizing valid mining claims, eliminating invalid claims, and preserving the rights of the public. Best v. Humboldt Mining Co., 371 U.S. 334, 336-337 (1963); Palmer v. Dredge Corp., 398 F.2d 791 (9th Cir. 1968), cert. denied, 393 U.S. 1066 (1969); Richard B. Jarrett, 19 IBLA 78, 80 (1975). While legal title to land embraced in a mining claim remains in the United States, the Secretary of the Interior is authorized to determine the validity of the claim. Best v. Humboldt Mining Co., supra at 337; Roy R. Cummins, supra at 225-226. No rights are created by an invalid mining claim. Best v. Humboldt Mining Co., supra at 337.

[2, 3] However, this is not sufficient to conclude an inquiry into appellant's rights arising from his mining claims in the present context. There is a provision of the mining law, 30 U.S.C. § 38 (1970), under which a person who has held and worked his mining claim for a period of time equal to the time prescribed by the statute of limitations for mining claims of the state where the claim is situated, during which period the land was open to mining location, is deemed to have made a location. W. E. Wicks, 14 IBLA 356, 359 (1974). In essence, holding and working a mining claim in open, notorious, adverse possession, for the period of time required to establish adverse possession of a mining claim, while the land is open to mining location, is regarded as tantamount to a new location or relocation, dispensing with proof of valid notices. W. E. Wicks, supra at 359; see United States v. Mike Guzman, 81 I.D. 685, 695-96, 18 IBLA 109, 131-134 (1974).

Thus, even though the claim was null and void ab initio, it might still be considered as a new location made by holding and working the claim pursuant to 30 U.S.C. § 38 (1970) while the land

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fn. 2 (continued)
to the Department of the Interior in that there was no provision for recording mining claims in the office of governmental agencies responsible for the administration of the lands upon which such claims were located. Thus it is likely that the BLM which bears the responsibility of determining the validity of mining claims located on public lands was not aware of the existence of appellant's claim until it was brought to the attention of the BLM by the Corps of Engineers, Department of the Army--the agency administering the New Melones Project. The decision below followed shortly thereafter. The law has recently been changed to require recording of unpatented mining claims with the BLM and failure to do so within the time allowed is "deemed conclusively to constitute an abandonment of the mining claim." Federal Land Policy and Management Act of 1976, section 314, P.L. No. 94-579, 90 Stat. 2769 (October 21, 1976) (to be codified in 43 U.S.C. § 1744).

was open for mineral location under the Mining Claims Rights Restoration Act of August 11, 1955, 30 U.S.C. § 621 et seq. (1970). United States v. Mike Guzman, supra at 697, 18 IBLA at 135; Ed Wuilliez, supra at 268. 3/ However, section 38 does not obviate the necessity of a discovery of a valuable mineral in order to establish a valid claim and a right to patent. Cole v. Ralph, 252 U.S. 286, 305-307 (1920); W. E. Wicks, supra at 360; Ed Wuilliez, supra at 268; and Meritt N. Barton, 79 I.D. 431-A, 435-436, 6 IBLA 293, 303 (1972).

The land status records in the case file disclose that the E 1/2 of Sec. 12 has had a complex history. All of this land with the exception of patented mining claims, was withdrawn initially for Power Site Reserve No. 86 and would ordinarily have been subject to mining entry since 1955 under 30 U.S.C. § 621(a) (1970). However, some of the land is embraced in other withdrawals including, as noted by the BLM, withdrawal (S-1491) for the New Melones Reservoir Project on March 31, 1968. It does appear that at least some of the lands were open to mining location for a period of time after August 11, 1955.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the decision appealed from is affirmed as modified to clarify that no determination is made as to the validity of appellant's claim under 30 U.S.C. § 38 (1970), and the case is remanded for further action consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Newton Frishberg
Chief Administrative Judge

3/ There is no evidence in the case file that appellant has filed a copy of the notice of location with the BLM as required under the Mining Claims Rights Restoration Act of August 11, 1955, 30 U.S.C. § 623 (1970). Although this has been held to be an insufficient reason for forfeiting a mining claim located on power site lands, Gardner C. McFarland, supra at 60; B. E. Burnaugh, 67 I.D. 366 (1960), appellant is also subject to the filing requirements set forth in section 314 of the Federal Land Policy and Management Act of 1976, P.L. No. 94-579, 90 Stat. 2769 (October 21, 1976).